

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 14,083

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Appeal of)

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INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare terminating her ANFC-related transitional medicaid benefits. The issue is whether a juvenile court order transferring legal custody of the petitioner's child to the Department of Social and Rehabilitation Services (SRS) and SRS's placement of the child in foster care terminates the petitioner's eligibility for medicaid.

FINDINGS OF FACT

The facts are not in dispute. After her ANFC was terminated in June, 1995, because of her employment, the petitioner continued to receive transitional medicaid based on her care of her daughter. In June, 1995, SRS filed a CHINS petition in juvenile court, and the court entered an order transferring legal custody of the petitioner's child to SRS until further notice.

SRS placed the child in foster care, where she has remained since that time. When the Department learned that the child was in SRS custody it terminated the petitioner's medicaid, effective November, 1995.

Since the CHINS Order the petitioner has been participating in training and therapy designed to allow her to regain custody of her daughter. As of the date of the fair hearing (December 27, 1995) no further court proceedings had been scheduled. However, an SRS "caseplan" developed on December 20, 1995, indicates that the petitioner's daughter will not be returned to the petitioner's custody for at least three more months.

ORDER

The Department's decision is affirmed.

REASONS

In Fair Hearings Nos. 12,265 and 12,296 (and affirmed in Fair Hearing No.12,979) the Board

exhaustively examined the issue of continuing ANFC benefits in cases in which children have been removed from an ANFC parent's home and placed in SRS custody. The Board held that at the point that "legal custody", as it is defined in the CHINS statutes, is "transferred" by the juvenile court from the recipient parent to SRS, and SRS then places the child in foster care, the recipient parent is no longer eligible for ANFC based on both the definition of "temporary absence" under the state and federal regulations and the prohibition in the federal statute and regulations on concurrent dual payments of ANFC for the same child.

In this case the petitioner's eligibility for transitional medicaid is based solely on her continuing "relationship" to ANFC eligibility (see Medicaid Manual §§ M330-M339), which, in turn, depends on her child residing in her home (see supra). Inasmuch as the circumstances in this matter regarding the custody and residence of the petitioner's child are indistinguishable from the above-cited cases, the Department's decision is affirmed.

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